CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50760 of 2019 [SM]

[Arising out of Order-in-Appeal No. DDNEXCUS/000/APP/12/2018-19 dated 28.12.2018 passed by the Commissioner (Appeals), Dehradun]

M/s Krishi Utpadan Mandi Samiti
C/o Anil Sonali & Associates
Chartered Accountants
15-B, Vishnu Garden,P.O. Gurukul
Kangri Haridwar – 249 404 (Uttarakhand) **...Appellant**

Vs.

The Commissioner
Central Goods and Service Tax
Customs and Central EXCISE,
Dehradun (Uttarakhand) **...Respondent**

APPEARANCE:

Shri Mr. Anil Kumar Jain, FCA for the Assessee
Ms. Tamanna Alam, Authorised Representative for the Department

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 28.11.2019
DATE OF DECISION : 10.06.2020

FINAL ORDER No.50693/2020

RACHNA GUPTA

Facts in brief are :

This is a second round of litigation as Order-in-Appeal No. 538/2015-16 dated 29.02.2016 passed by Commissioner (Appeals), Central Excise, Appeals-I,` Meerut vide which appeal against demand of service tax as was confirmed vide Order-in-Original No. 66/JC/DDN/2015 dated 07.08.2015 against M/s Krishi Utpadan Mandi Samiti, Haridwar was remanded back to the original adjudicating authority to be determined on the basis of documentary evidence placed by the appellant. The object of remand was to ascertain as to whether the appellant has crossed the threshold limit of exemption during the period under consideration and to re-determine the service tax liability on renting of immovable property after allowing the benefit of exemption Notification No. 06/2005-ST dated 01.03.2005. The said demand was raised for recovery of service tax on the consideration received by the party during the period Apri, 2009 to March, 2014 in lieu of providing taxable services of "renting of immovable property" to the arhatis, banks canteen and shops etc. that for the period upto 30.06.12, the services rendered by M/s KUMS, Haridwar were in the nature of taxable services of "renting of immovable property" under Section 65(105)(zzzz) and thereafter it was covered under Section 66B of the Act.

2. As per the aforesaid notification threshold limit of exemption was Rs. 4 lakh which was further amended to Rs. 8 lakh and then to Rs. 10 lakh vide Notification No. 4/2007-ST and Notification No. 8/2008-ST respectively. After 01.07.2012 this threshold limit of Rs. 10 lakh has been continued vide new Notification No. 33/2012-ST dated 20.06.2012. Alleging that the said threshold limit stands crossed that department served a show-cause-notice C.No. IV-CE(9)CP/M-I/152/2014 dated 17.09.2014, proposing recovery of Rs. 1748702/- as demand of service tax alongwith interest at appropriate rate and proportionate penalty upon the appellant.

3. We have heard learned Counsel for the appellant who mentioned that M/s Krishi Utpadan Mandi Samiti Haridwar (KUMS Haridwar is an

APMC (Agricultural Produce Marketing Committee) created by the State Legislature to help the farmers to access the buyer for their produce at minimum support price declared by the State Govt. It is mentioned that the building/sheds are given on rent to the following five categories of persons :

i. Sheds/shops to license holders dealing in agricultural produce.

ii. Godowns to the Food Corporation of India & other govt. departments used for storage of agriculture produce.

iii. Bank for use of farmers and general public.

iv. Canteen for use of farmers and general public.

v. General shop keepers outside the mandi area & not having licence, dealing in various items with farmers and general public.

Among the above categories first two are engaged in the activities related with the farmers and agriculture produce.

4. It is further submitted that the above demand relates to the period from April, 2009 to March, 2014, this can be divided into two periods:

(a) Upto 30th June, 2012 (before GST Regime)

(b) For the period from 01.07.2012 onwards (GST Regime).

Learned Counsel has relied upon CESTAT Final Order Nos. A/53436-53500/2017, dated 25.05.2017 as reported in 2017 (4) G.S.T.L 346 (Tri.-Del.) (Krishi Upaj Mandi Samiti Commissioner). Accordingly, has prayed for order-under-challenge to be set aside & appeal to be allowed.

Learned DR, on the other hand, has justified the order-under-challenge and thus has prayed for dismissal of appeal.

After hearing the parties at length & from perusal of record, it is observed as follows:

The only issue to be decided is whether M/s KUMS, Haridwar has crossed the threshold limit of Rs. 10 lakhs.

Admittedly, the period of demand is 2009 to 2014 i.e. pre as well as post Negative Regime. It is also admitted that gross rent received by appellant during these years is Rs. 15253485/- whereupon service-tax payable is Rs. 1748702/-. It is nowhere has been denied that some part of rent is received for sheds/shops/godowns used for the purpose of agricultural produce.

At this stage it is important to know the change that occurred Post Negative era Section 66D got incorporated which reads as :

"66D. The negative list shall comprise of the following services, namely:-

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) [any service] other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of-

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [***] testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;"

From bare reading it is noted that with the introduction of Negative List Regime of Taxation w.e.f. 1.7.2012, the appellants' services were excluded from the tax liability.

It is clear that the appellants, being an Agricultural Produce Marketing Committee, is excluded from the tax liability in terms of the above provisions. Services relating to agricultural produce by way of storage or warehousing are in the negative list. The scope of negative list has been examined by the Board in the Education Guide dated 20.06.2012. Para 4.4.9 of the said Guide states as below:-

"4.4.9 Would leasing of vacant land with green house or a storage shed meant for agricultural produce be covered in the negative list?

Yes. In terms of the specified services relating to agriculture 'leasing' of vacant services land with or without structure incidental to its use' is covered in the negative list. Therefore, if vacant land has a structure like storage shed or a green house built on it, which is incidental to its use for agriculture then its lease would be covered under negative list entry."

Further, on APMCs, the guide clarified as below:-

"4.4.11 What are the services referred to in the negative list entry pertaining to Agricultural Produce Marketing Committee or Board?

Agricultural Produce Marketing Committees or Boards are set up under a State Law for purpose of regulating the marketing of agricultural produce. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc. Services provided by such Agricultural Produce Marketing Committee or Board are covered in the negative list. However any service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property."

Accordingly, we hold that the appellants are not liable to service tax on renting of immovable property used for storage of agricultural produce in the market area.

5. Hence, the gross rent received w.r.t. activities related to agricultural purposes has to be excluded from the gross value of rent as confirmed by adjudicating authority below. I draw my support from decision of this Tribunal in appellant's own case KUMS Vs. CCE&ST, Jaipur 2017(4)GSTL 346 (Tri. Del) wherein it was held.

> Agricultural Produce Marketing Committee - Service Tax in respect of shed/shop/premises leased out to traders/others for storage of agricultural produce in marketing area not payable, with introduction of Negative List Regime of Taxation w.e.f. 1-7-2012 - However, Negative List not covers activities of renting of immovable property for other than agricultural produce. [paras 10, 11, 12, 13]

6. Now coming to issue of "aggregate value" mentioned in the impugned notification. I find that this notification was effective upto 30.06.12 and thereafter the SSI exemption was continued vide Notification 33/2012-ST dated 20.06.12. I find that clause (vii) and (viii) of Para 2 and Explanation (B) regarding "aggregate value" given

in the said notification dated 30.06.2012 are relevant in the instant case as they provide that:-

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services;

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees **ten lakhs** in the preceding financial year.

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices received during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable there on under section 66B of the said Finance Act under any other notification."

7. I observe that an optional exemption has been provided vide Notification No. 06/2005 dated 01.03.2005, as amended from time to time, on services of an aggregate value upto ten lacs, every financial year, to every assessee. But adjudicating authority has not considered that their own department issues registration certificate to the assesses on the basis of a Permanent Account Number, distinctly issued by the income tax department of India to a single identity and so any two different persons cannot be assessed on a single PAN, and each mandi is a separate identity and balance sheets are prepared and income tax are assessed separately. Thus, I hold that adjudicating authority has by twisting the legal position has denied the exemption by mentioning Mandi Parished wrongly.

8. Thus, I hold that adjudicating authority has wrongly clubbed to incomes of various Mandi Parishads to that of appellant's value of rent received. Hence, said amount is also liable to be deducted. I draw my support from **CCE, Ahmedabad Vs. S.C. Patel 2011(264)E.L.T. 414 (Tri.-Ahmd.)** which it was held that units having separate income/sales tax, import and export code numbers, bank accounts

etc. clearances of such units cannot be clubbed. **In CCE, Surat-II Vs. Catalco Chemical (P) Ltd. 2012(277) ELT 56 (Guj)**, it was held that while clubbing of clearances department has to establish mutuality of interest of flowback of funds else clearances of different units cannot be clubbed together for ascertaining the SSI exemption benefit. Since each Mandi Samiti has its own PAN number and that all the statutory dues like Income tax, House Tax & other taxes are deposited separately & individually, thus each Samiti is an independent legal entity and should be treated as a separate body. In view of foregoing discussions and judicial pronouncements, I hold that clubbing receipts of all Samitis is not justified and benefit of exemption limits should be given to the appellant.

9. In view of entire above discussion it becomes clear that the rent received by appellant qua sheds rented for commercial purpose is liable to service tax. Also I opine Proviso to Section 73(1) can be invoked only, where the service tax has not been paid or levied or short paid or short levied, by reason of fraud; or collusion; or willful mis-statement; or suppression of facts; or contravention of any of the provisions of Chapter V of Finance Act, 1994 or rules made thereunder with intent to evade payment of service tax by the person chargeable with service tax. If any one of the ingredients are present, then the demand for not paid or short paid service tax can be made invoking extended period of limitation of 5 years, from the relevant date. Admittedly, the appellants are a Government Organisation; their functions are regulated by the said enactment and the rules. In such situation, it is clear that there will be a rebuttable presumption regarding non-existence of any of these ingredients on the part of the appellant. I have perused the reasons recorded by the lower

authorities to sustain the demand for longer period and am not convinced with the findings as there is no evidence of the appellants' malafide act to evade Service Tax liability by resorting to conduct, which will attract any of the serious allegation listed in the proviso to Section 73(1) of the Act.

10. In view of entire above discussion, it stands clear that demand confirmed against the appellant is liable to be set aside because the value of rent which falls within tax net and within normal period of limitations remains less than the threshold value of Rs. 10 lakhs in the impugned notification. Thus the question framed above is decided in negative i.e. in favour of appellant & against department. Resultantly, the order under challenge is set aside & appeal stands allowed.

[Pronounced in the Open Court On 10.06.2020]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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